

Visa Waiver Program (VWP)

Overview – What is the Visa Waiver Program?

The Visa Waiver Program (VWP) enables nationals of designated countries¹ to travel to the United States for tourism or business (visitor [B] visa purposes only) for stays of 90 days or less without obtaining a visa. The program was established to eliminate unnecessary barriers to travel, stimulate the tourism industry, and permit efficient use of U.S. government resources. Countries are designated in the VWP by the Secretary of Homeland Security in consultation with the Secretary of State. To be considered for VWP designation, a country must first meet requirements established through U.S. law, regulations, and policies. VWP travelers must obtain travel authorization through Department of Homeland Security's (DHS) Electronic System for Travel Authorization (ESTA) prior to travel.

How Does a Country Qualify for Consideration?

Current criteria include:

- Reciprocal visa-free travel for U.S. citizens and nationals
- A nonimmigrant visitor visa (B visa category) refusal rate of less than three percent world-wide for the previous fiscal year (or a two-year average visa refusal rate of less than 2 percent)
- Issuance of biometric passports
- Completion of the required information sharing agreements
- Timely acceptance of nationals for repatriation
- Successful completion of a thorough security review by DHS

¹ With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

Can I Get More Details on These Requirements?

Reciprocal Visa-free Travel for U.S. Citizens and Nationals

To be eligible for VWP designation, a country must already allow or be willing to grant visa-free travel to U.S. citizens entering as tourists or to conduct business (equivalent to the B visa category offered by the United States) for stays of at least 90 days.

Low Nonimmigrant Visitor Visa Refusal Rate

To be designated for participation in the VWP, a country must have a nonimmigrant visitor visa (B visa category) refusal rate of less than three percent world-wide for the previous fiscal year (or less than two percent average for the previous two fiscal years). This calculation includes visitor visa applications made by all nationals of that country at any post in the world and is not limited to applications made at the post(s) in that country. These refusal rates are made publically available on www.travel.state.gov at the end of each fiscal year.

Issuance of Biometric Passports

VWP countries must issue International Civil Aviation Organization (ICAO)-compliant biometric passports containing an integrated chip (i.e., e-passports.) Nationals of countries designated in the VWP after passage of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) must use e-passports if they wish to enter the United States under the VWP.

Completion of Information Sharing Agreements

The 9/11 Act amended the primary VWP statute to create new information sharing mandates for all VWP countries. The following three instruments are deemed sufficient to meet these requirements:

An arrangement for the exchange of terrorism screening information in accordance with Homeland Security Presidential Directive 6 (HSPD-6). Under this arrangement, the United States provides the foreign partner with access to an extract of the U.S. Terrorist Screening Database (TSDB) in exchange for their list of known and suspected terrorists. Foreign partners may conduct screening against the TSDB extract through a variety of mechanisms. Confirmation of potential terrorism screening matches is managed in accordance with established

procedures. The Department of State and the Terrorist Screening Center coordinate terrorism information sharing arrangements with foreign partners.

An agreement on Preventing and Combating Serious Crime (PCSC). The PCSC agreement provides for the reciprocal exchange of biometric data, along with any relevant underlying biographic and other relevant information, for the purposes of preventing, detecting and investigating serious criminal activity and terrorism. Under a PCSC Agreement, the parties provide each other with electronic access to their fingerprint and, prospectively, DNA databases, on a query (hit/no hit) basis. Each side can query the other side's databases and, if a match is found, may request identity and other information about the individual as set forth in the agreement. The agreement also permits the parties to spontaneously share information about criminals and terrorists. DHS and the Department of Justice negotiate the PCSC agreements for the United States. Technical implementation is under the responsibility of DHS and the Federal Bureau of Investigation (FBI).

An agreement to report information on lost and stolen passports to the United States government through INTERPOL (or other means as designated by the Secretary of Homeland Security). To fulfill this requirement, the United States and each of its VWP partners enter into a Memorandum of Understanding (MOU) or an exchange of diplomatic notes documenting their intent to make available information on lost and stolen passports to the other through INTERPOL or another agreed upon mechanism consistent with Interpol's best practices. VWP countries are expected to report lost and stolen passport data on a daily basis.

Repatriation of Nationals

VWP countries must accept repatriation of any citizen, former citizen, or national ordered removed by the United States no later than three weeks after the issuance of a final order of removal.

Completion of a Thorough Security Review by DHS

U.S. law requires DHS to evaluate the effect that a country's designation would have on the law enforcement and security interests of the United States. These interests include enforcement of the immigration laws of the United States and the existence and effectiveness of the aspirant country's agreements and procedures for extraditing to the United States individuals, including its own nationals, who violate United States law.

These reviews are comprehensive and involve a visit by DHS and other U.S. government officials to the VWP aspirant country. During this visit, the assessment team meets with host government officials in charge of immigration, law enforcement, counterterrorism, border security and document issuance, and verifies applicable standards and procedures to determine whether the VWP aspirant country meets the stringent security standards required for VWP designation.

DHS takes into consideration other factors, including airport security standards, cooperation in the operation of an effective air marshals program, issuance standards for passports and other travel documents, and other security-related factors such as cooperation with the United States intelligence community in sharing information regarding terrorist threats.

DHS also obtains an independent intelligence assessment from the Director of National Intelligence (DNI). The DNI evaluates, among other things, the effectiveness of a country's counterterrorism efforts.

DHS reports the conclusions of its review to the U.S. Congress. VWP assessment teams frequently issue recommendations for improvement of procedures and practices that must be met prior to VWP designation. Based on the findings and recommendations of the report, the Secretary of Homeland Security, in consultation with the Secretary of State, determines whether the country may participate in the VWP and, if the determination is positive, the date of effective travel under the VWP. An official notification designating a new VWP country is then published in the Federal Register.

How Does the Process Begin?

Countries may express interest in joining the VWP through an official request to the U.S. Embassy or Department of State, Bureau of Consular Affairs, which will share the request with DHS.

Where Can I Get Additional Information?

Information is available on the following websites:

http://travel.state.gov/visa/temp/without/without_1990.html and

http://www.cbp.gov/xp/cgov/travel/id_visa/business_pleasure/vwp/faq_vwp.xml.

Both DHS and the Department of State can provide technical advice as an aspirant goes through the process for consideration in the VWP. The head of the consular

section at the nearest U.S. Embassy can provide information. Aspirants may also contact the DHS and the Department of State at visawaiverprogramoffice@hq.dhs.gov and visawaiverprogram@state.gov.